

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA,   | : |                                |
|                             | : |                                |
| PLAINTIFF,                  | : |                                |
|                             | : |                                |
| v.                          | : | CIVIL ACTION NO. 2:06cv116-MEF |
|                             | : |                                |
| FIVE HUNDRED FORTY-THREE    | : |                                |
| THOUSAND ONE HUNDRED NINETY | : |                                |
| DOLLARS (\$543,190.00)      | : |                                |
| IN UNITED STATES CURRENCY,  | : |                                |
|                             | : |                                |
| DEFENDANT.                  | : |                                |

MOTION FOR A PROTECTIVE ORDER

The United States of America (United States), by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and John T. Harmon, Assistant United States Attorney, hereby respectfully submits the following:

1. The Claimant has noticed the deposition of Alabama State Trooper Andy Sutley for October 3, 2007. (See attached notice).

2. Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the United States moves for a protective order regarding this deposition.

3. As grounds, the United States cites the currently pending United States' Second Motion for Summary Judgment which raises a substantial question regarding the Court's jurisdiction to hear the claim in this case. A ruling in the United States' favor will end this matter and result in a judgment for the United States on all issues. Accordingly, the United States and Trooper Andy Sutley

should not be put through the rigors of discovery until the jurisdictional issue is resolved.

Without jurisdiction the court cannot proceed at all (emphasis added) in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. (cite omitted).

Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 94, L.Ed.2d 210, 227 (1998).

4. Because the United States has raised a substantial question about the Court's jurisdiction to hear this claim, it should not proceed at all until this matter is resolved and should order that discovery not be had until jurisdiction is decided.

5. Under Rule 26(c) of the Federal Rules of Civil Procedure, undersigned counsel certifies that he has in good faith conferred with opposing counsel in an effort to resolve this dispute without court action.

Respectfully submitted this 26<sup>th</sup> day of September, 2007.

FOR THE UNITED STATES ATTORNEY  
LEURA G. CANARY

/s/John T. Harmon  
John T. Harmon  
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Bruce Maddox.

/s/John T. Harmon  
John T. Harmon  
Assistant United States Attorney